



1 Arizona Consumer Reporting Agencies and Fair Credit Reporting Act, A.R.S. §§ 44-1691-  
 2 1698.01 (“Arizona Fair Credit Reporting Act”). On February 25, 2013, we granted  
 3 plaintiff’s motion for leave to amend her complaint to add Guardian and Scottsdale  
 4 Healthcare as defendants (doc. 23). Defendant Guardian now moves to dismiss Count 4 of  
 5 the Second Amended Complaint, arguing that the claim is barred by the statute of limitations.

## 6 7 II

8 Plaintiff alleges in Count 4 that Guardian negligently or willfully violated § 44-1965  
 9 of the Arizona Fair Credit Reporting Act when it failed to perform a reasonable investigation  
 10 of plaintiff’s disputes and “verified” to UBS that the false information was correct. The  
 11 parties agree that the applicable statute of limitations is A.R.S. § 12-541(5), which imposes  
 12 a one-year filing deadline.

13 Guardian contends that plaintiff’s claim accrued no later than May 16, 2011, the last  
 14 date that plaintiff disputed the incorrect report. Therefore, according to Guardian, the statute  
 15 of limitations ran on plaintiff’s state law cause of action no later than May 16, 2012, almost  
 16 a year before plaintiff first named Guardian as a defendant on February 27, 2013.

17 “A district court may dismiss a claim ‘[i]f the running of the statute [of limitations]  
 18 is apparent on the face of the complaint.’” Cervantes v. Countrywide Home Loans, Inc., 656  
 19 F.3d 1034, 1045 (9th Cir. 2011) (quoting Jablon v. Dean Witter & Co., 614 F.2d 677, 682  
 20 (9th Cir. 1980)). A complaint cannot be dismissed “unless it appears beyond doubt that the  
 21 plaintiff can prove no set of facts that would establish the timeliness of the claim.”  
 22 Hernandez v. City of El Monte, 138 F.3d 393, 402 (9th Cir. 1998) (citation omitted).

23 Under Arizona law, a cause of action accrues and the statute of limitations begins to  
 24 run when “the plaintiff knows or with reasonable diligence should know the facts  
 25 underlying” the defendant’s wrongful conduct that caused an injury. Doe v. Roe, 191 Ariz.  
 26 313, 322, 955 P.2d 951, 960 (1998). “Ordinarily, a cause of action accrues when ‘the  
 27 plaintiff knows or should have known of both the *what* and *who* elements of causation.’”  
 28 Kool Radiators, Inc. v. Evans, 229 Ariz. 532, 535, 278 P.3d 310, 313 (Ct. App. 2012)

(emphasis in original). Therefore, plaintiff's state law cause of action against Guardian did not accrue until plaintiff knew, or with reasonable diligence should have known, that Guardian supplied UBS with the false information.

Although the Second Amended Complaint alleges that, on or about April 12, 2011, plaintiff first learned that UBS had reported the false information, SAC ¶ 22, the complaint is silent as to when plaintiff discovered that Guardian had supplied UBS with the false information. Plaintiff asserts in her response to the motion to dismiss that she did not discover who had supplied UBS with the false information until December 24, 2012, after UBS responded to her discovery requests. Within two months of this discovery, plaintiff amended her complaint to assert claims against Guardian. Guardian does not dispute the date that plaintiff first learned of its identity. Instead, it argues that plaintiff failed to exercise reasonable diligence in identifying Guardian as a potential defendant.

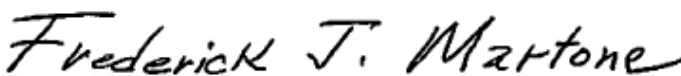
A claim may be dismissed on the ground that it is barred by the statute of limitations only when "the face of the complaint establishe[s] facts that foreclose[ ] any showing of reasonable diligence." Von Saher v. Norton Simon Museum of Art, 592 F.3d 954, 969 (9th Cir. 2010). Because a determination on equitable tolling "often depends on matters outside the pleadings, it is not generally amenable to resolution on a Rule 12(b)(6) motion." Supermail Cargo, Inc. v. United States, 68 F.3d 1204, 1206 (9th Cir. 1995) (citation omitted).

It is not apparent from the face of the Second Amended Complaint that plaintiff's claim against Guardian under the Arizona Fair Credit Reporting Act is time barred. Because it does not appear beyond doubt that plaintiff can prove no set of facts that would establish the timeliness of her claim, the motion to dismiss on statute of limitations grounds is denied.

### III

**IT IS ORDERED DENYING** Guardian's motion to dismiss Count 4 (doc. 39).

DATED this 24<sup>th</sup> day of June, 2013.



Frederick J. Martone  
Senior United States District Judge